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SYLLABUS:

Creation of new municipal courts without county wide jurisdiction whereby all or part of the territory assigned to certain county court judges is preempted does not abolish the office of county court judge or judges who were elected as such for a term certain in a county court district comprised of all the area of an entire county outside of the then existing municipal courts territorial jurisdiction.

Columbus, Ohio, August 27, 1963

Hon. Clyde W. Osborne
Prosecuting Attorney
Mahoning County Court House
Youngstown, Ohio

Dear Sir:

Your request for my opinion involves essentially the following facts: There are presently five county court judges elected at large in Mahoning County; three of the judges were elected for four year terms and two of them for two year terms at the November, 1962 election. The territorial jurisdiction of each judge was assigned by the Common Pleas Court of Mahoning County as provided by law. The 105th General Assembly created two new municipal courts in Mahoning County, one in the City of Campbell, the other in the City of Struthers. The Municipal Court of Campbell wipes out County Court No. I while the Municipal Court of Struthers invades the territory of County Court No. V.

Concerning the factual situation outlined in the preceding paragraph you request my answer to the following questions:

"1. Has this new legislation, in effect, abolished one or more of the existing county judges, and if so, which one?

"2. If none are abolished, does it now become the duty of the Common Pleas bench of this County to re-assign the county court judges to new areas since all were elected to their posts on a county wide basis?

"3. Since certain of the county court territories has by the new legislation been included in a municipal court jurisdiction, is a presently serving county court judge

qualified to continue in that office if his residence is in the municipal court territory?

“4. What responsibility for salaries, expenses, etc. do the county commissioners have as to both the county court judges and the new municipal judge?”

The answers to your questions involve certain statutes which we must include by either quotation or reference in this opinion for the sake of clarity.

Section 1907.011, Revised Code, is as follows:

“There is hereby created in each county of the state, in which the territorial jurisdiction of a municipal court or municipal courts is not co-extensive with the boundaries of the county, a court to be known as the county court with jurisdiction throughout a county court district consisting of all territory within the county not subject to the territorial jurisdiction of any municipal court.”

This section establishes the county court district as being all of a county not included in the jurisdiction of a municipal court.

Section 1907.041, Revised Code, provides for the number of county court judges to serve in a county court district based upon the population of the district. Since it is the population of the county court district which determines the number of judges, the population of areas within the jurisdiction of any municipal court should be excluded.

Section 1907.051, Revised Code, contains the following mandate:

“A county court judge during his term of office shall be a qualified elector and a resident of the county court district to which he is elected or appointed.”

Here again, the county court judge must reside in the county court district, and is thus prohibited from residing in an area within the jurisdiction of any municipal court.

Section 1907.071, Revised Code, reads in part as follows:

“In counties having more than one county court judge, the court of common pleas of such county shall divide the county court district into areas of separate jurisdiction and shall designate the area in which each judge shall have jurisdiction to the exclusion of any other judge

of such district, except as provided in section 1907.061 (1907.06.1) of the Revised Code, and the location where each judge shall hold court. Except in county court districts exceeding one hundred fifty thousand population each such area shall be made up of one or more townships. In assigning areas, the court of common pleas shall make each area as equal in population to others in the district as is possible under existing conditions.

“Whenever the territory of a county court district is reduced by the territorial expansion of municipal court jurisdiction, the court of common pleas shall redetermine such areas of separate jurisdiction and, if necessary, re-assign areas so as to make each area as equal in population to others in the district as is possible under the altered conditions. If a county court judgeship becomes vacant, the court of common pleas may redetermine such areas of jurisdiction by changing the number of judges for such county court district, if necessary, in accordance with population standards set forth in section 1907.041 (Section 1907.04.1) of the Revised Code.

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This section sets forth explicitly the procedure to be followed in your situation. The only provision contained therein regarding changing of the number of judges arises where a county court judgeship becomes vacant. When the county court district is diminished by territorial expansion of municipal court jurisdiction, the only action authorized is a redetermination and re-assignment of the areas of separate jurisdiction.

In view of the above statutory authority, I will now turn to your specific inquiries.

1. The answer to your first question must be in the negative. There is no provision in the Revised Code which *effects* the abolition of a county court judgeship when his area of jurisdiction is diminished by the expansion or establishment of a municipal court. On the contrary, Section 1907.071, *supra*, provides that the common pleas court shall redetermine the areas of separate jurisdiction of the existing county courts, when this occurs.

2. It follows from the foregoing (again based upon Section 1907.071, *supra*.) that the common pleas court *must* redetermine the areas of jurisdiction for the existing county court judges.

3. In regard to your third inquiry, reference is again made to the first sentence of Section 1907.051, Revised Code, which is quoted above. This language will have no effect on a judge whose residence is not brought within the jurisdiction of one of the new municipal courts. This would follow even though the entire area of his territorial jurisdiction is enveloped by a new or expanded municipal court. He still lives within the county court district, i.e., the entire county, exclusive of the areas of municipal court jurisdiction. Some doubt may exist as to his ability to hold court if his place of residence falls within the jurisdiction of one of the new municipal courts, however the language, "to which he is elected or appointed," should be interpreted as a savings clause and to mean the county court district as it existed at the time of his election or appointment. I think this is the better interpretation. In answer to your question, then, I feel that all the present judges are qualified to sit through the remainder of their terms, regardless of the creation of the new municipal courts.

4. Section 1907.081, Revised Code, provides that the compensation of county court judges shall be paid entirely out of the county treasury. The same is true of any additional compensation allowed under Section 1907.082, Revised Code. In addition to this, Section 1907.091, Revised Code, provides that:

"The board of county commissioners shall provide each county court judge in the county suitable court and office space and all materials necessary for the business of the court, including a current set of the Revised Code."

As to the new municipal courts, the county commissioners are responsible for two-fifths of the salary of each judge thereof. Section 1901.11, Revised Code, reads in pertinent part as follows:

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"The compensation of municipal judges shall be paid in semi-monthly installments, three fifths of such amount being payable from the city treasury and two fifths of such amount being payable from the treasury of the county in which such city is situated. * * *"

You should anticipate certain problems that must be solved before the election to be held in November, 1964. These answers are to be found in the same statutes applied in answering your current questions.

In view of the foregoing and in response to your inquiry, it is my opinion and you are advised that:

Creation of new municipal courts without county wide jurisdiction whereby all or part of the territory assigned to certain county court judges is preempted does not abolish the office of county court judge or judges who were elected as such for a term certain in a county court district comprised of all the area of an entire county outside of the then existing municipal courts territorial jurisdiction.

Respectfully,
WILLIAM B. SAXBE
Attorney General